

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

OBERER LAND DEVELOPERS, LTD., :	:	CASE NO.: 3:05 CV 0333
<i>Et al.,</i>	:	
	:	
Plaintiffs,	:	(Magistrate Judge Sharon L. Ovington)
	:	(By Consent of the Parties)
vs.	:	
	:	
BEAVERCREEK TOWNSHIP, OHIO, :	:	
<i>Et al.,</i>	:	
	:	
Defendants.	:	

BFD NEW GERMANY TREBEIN, LTD. :	:	CASE NO.: 3:05 CV 0385
	:	
Plaintiffs,	:	(Magistrate Judge Sharon L. Ovington)
	:	(By Consent of the Parties)
vs.	:	
	:	
BEAVERCREEK TOWNSHIP, OHIO, :	:	
<i>Et al.,</i>	:	
	:	
Defendants.	:	

ORDER APPROVING AMENDMENT TO CONSENT DECREE IN *OBERER LAND DEVELOPERS, LTD. v. BEAVERCREEK TOWNSHIP, OHIO*
CASE NO. 3:05 CV 0333

This Court has reviewed the Parties' Joint Motion to Amend Consent Decree [Doc. #22] in *Oberer Land Developers, Ltd. v. Beaver Creek Township, Ohio*, Case No. 3:05 CV 0333, filed on behalf of the parties requesting certain amendments to the Consent Decree issued by this Court on May 23, 2006.

Based upon the exhibits attached to the motion, the Court finds that notice was published on November 9, 2012, in a newspaper of general circulation within Beaver Creek Township,

Greene County, Ohio of the intention of the Board of Trustees of Beavercreek Township to meet on November 27, 2012, to consider an amendment to the Consent Decree and that similar notice was published on December 28, 2012, in the same newspaper of the parties' intention to submit the proposed amendment to this Court on January 9, 2013, for its consideration. These publications conform to the requirements of R.C. § 505.07. This Court further finds that, because of the circumstances and conditions that have changed since the date of the approval of the original Consent Decree, a modification of the Consent Decree is warranted.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

A. Exhibit "B" of the Consent Decree ("Development Conditions for the 'Nathaniel's Grove Parcel'") be modified as follows:

- i. **Current Terms:** Product A (empty nester / patio product) as set forth in Exhibit B of the Consent Decree for Final Judgment Submitted by the Parties in *Oberer Land Developers, LTD v. Beavercreek Township, Ohio, et al.*, Case No. 3:05 CV 0333 currently contains the following Product Description:

"Product Description: Product geared towards seniors and other buyers without children. Most floor plans are single story and all offer first floor master bedrooms. These floor plans offer 2 to 3 bedrooms, studies, and morning rooms. No floor plans will offer 4 bedrooms. Most houses will be constructed on slabs. To the extent that a Product A is constructed with a basement, said basement will be in compliance with Condition 13 of this Exhibit B. All exterior lawn and landscaping maintenance is performed by a maintenance company contracted by the owners association. No individual owners are responsible of the maintenance of their own yard. Amenities within this area will be geared towards passive activities to include landscaped gardens, water features, architectural shelters, sitting / viewing areas, and walking trails. The Product design is intended to attract an empty-nester buyer and therefore limit the developments impact on schools. As can be seen on the Development Plan attached as Exhibit B-1, Product A has been intentionally located directly contiguous to the Conservation Easement, specifically along the entire Northern boundary of the Conservation Easement, in order to minimize as much as possible the impact of the development on such area."

- ii. **Terms as Amended:** The "Product Description" set forth above for Product A (empty nester / patio product) be amended to strike the phrase

“All exterior lawn and landscaping maintenance is performed by a maintenance company contracted by the owners association. No individual owners are responsible of the maintenance of their own yard.”

B. Exhibit “B” of the Consent Decree (“Development Conditions for the ‘Nathaniel’s Grove Parcel’”) also be modified as follows:

i. **Current Terms:** The “Conditions” as set forth in Exhibit B of the Consent Decree for Final Judgment Submitted by the Parties in *Oberer Land Developers, LTD v. Beavercreek Township, Ohio, et al.*, Case No. 3:05 CV 0333 currently contain the following Condition number three:

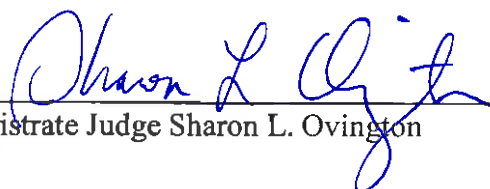
“3. The recreation center and its associated amenities shall be constructed in phase 1 of the development.”

ii. **Terms as Amended:** The Condition number three set forth above be amended to state in its entirety:

“3. Construction shall begin on the recreation center and its associated amenities before one-third of the zoning permits for the number of approved units have been issued. The Township shall not be obligated to issue more than one-third of the total number of required zoning permits until construction of the recreation center and its amenities has commenced. Once construction of the recreation center and associated amenities is commenced, the Township may limit the number of zoning permits for unconstructed units to no more than 30 permits at any given time. In the event that construction of the recreation center and its associated amenities has not been completed within 12 months of commencement, the Township may withhold any remaining zoning permits until such completion.”

C. All other terms and conditions of Exhibit “B” shall remain unchanged.

IT IS FURTHER ORDERED, that this Court shall retain jurisdiction of this matter for purposes of its enforcement and implementation.


Magistrate Judge Sharon L. Ovington